The prosecution adduced evidence which showed that Abdul Ghani was not married to Jaibul Nisa at the time he made the declaration as a local sponsor in support of the application of Jaibul Nisa for the grant of a permit to enter and reside in Malaya. Abdul Ghani and Jaibul Nisa were betrothed to each other before the latter came to Malaya but when she arrived in Penang she and Abdul Ghani went through a ceremony of marriage.

In support of the application Abdul Ghani produced to the Assistant Controller of Immigration Jaibul Nisa's Indian passport in which she was described as the wife of Abdul Ghani. On the strength of this passport the Immigration Officer was satisfied that Abdul Ghani and Jaibul Nisa were husband and wife and a permit was eventually issued by the Immigration Authorities.

At the conclusion of the case for the prosecution the learned Magistrate found that there was no *prima facie* case made and acquitted and discharged the accused. The ground for such finding was that the Immigration Authorities issued the entry permit on the strength of the Indian passport. This is obviously wrong. The entry permit was issued as a result of the declaration which was supported by the passport; a passport is usually a document on which one can rely as to the status of a person and quite naturally therefore the passport in question was considered by the Immigration Officer a sound corroboration of what was stated in the application. All the same, however, the permit was issued solely on the strength of what was stated in the application and declaration by Abdul Ghani, and if that declaration is false an offence under section 55 of the Immigration Ordinance, 1952 has been committed.

For the above reasons I set aside the order of the learned Magistrate acquitting and discharging Abdul Ghani and ordered that the case be remitted to the learned Magistrate for further proceedings.

At the hearing of this revision, the learned Public Prosecutor also informed me that although there is no mention of this in the record the learned Magistrate refused to accept as an exhibit the Surat Nikah which the prosecuting officer tendered at the trial.

I directed, therefore, that before Abdul Ghani is called upon to enter his defence, the prosecution may adduce such further evidence as they may consider necessary.

Appeal allowed.

Solicitors for the accused: *Bannon & Bailey.*

TAN CHWEE LEONG v. REGINA

[C. Cr. A. (Murray-Aynsley C.J., Taylor and Knight JJ.) June 25, 1955]

[Singapore — Criminal Appeal No. 37 of 1954]

Penal Code, ss. 392 and 397 — Armed robbery — Accomplice — Whether sufficient evidence upon which Jury might reasonably find prosecution witness to be accomplice — Matter not put to the Jury in course of Summing-up.

The appellant in this case was convicted of armed robbery in the following circumstances. The driver of a car on March 12, 1953 took some people to a spot in Dunearn Road. He waited there for some time during which he heard a noisy incident. The men returned hurriedly to the car, one of them injured and bleeding. He then drove the party back to town. Later the same evening he made a statement to the police.

The appellant was arrested on August 6, 1954. At the trial it was proved that the incident was a robbery in the course of which one robber was hurt. The evidence against the appellant consisted of identification by the car driver and of a confession which was afterwards retracted. The conviction was attacked on the ground that the car driver was an accomplice.

Held: if there is evidence upon which the jury might reasonably find that a witness for the prosecution was an accomplice the question must be put to the jury for their consideration and the usual warning given, even though there is other and untainted evidence on which the jury might convict. In this case, there was evidence on which the jury might have considered the witness an accomplice, therefore the appeal must be allowed.

Case referred to:—

(1) *Davies v. Director of Public Prosecutions* (1954) A.C. 378; (1954) 1 All E.R. 507.

COURT OF CRIMINAL APPEAL.

G. Abisheganaden for the appellant.

T. A. Mahoney (Crown Counsel) for the respondent.

Murray-Aynsley C.J. (delivering the judgment of the Court) : — In this case the Court decided to allow the appeal and we intimated that we would give reasons later. They are as follows.

The appellant was convicted of robbery in the following circumstances. The driver of a car on 12th March 1953 took some people to a spot in Dunearn Road. He waited there for some time during which he heard a noisy incident. The men returned hurriedly to the car, one of them injured and bleeding. He then drove the party back to town. Later the same evening he made a statement to the police.

The appellant was arrested on August 6th, 1954. At the trial it was proved that the incident was a robbery in the course of which one robber was hurt. The evidence against the appellant consisted of identification by the car driver referred to and of a confession which was afterwards retracted.

The conviction was attacked principally on the ground that the car driver was an accomplice. The question was raised by the defence in the Court below but the matter was not put to the jury in the course of the summing up.

Since the case of *Davies*[1] it is clear that if there is evidence upon which the jury might reasonably find that a witness for the prosecution was an accomplice the question must be put to the jury for their consideration and the usual warning given, even though there is other and untainted evidence on which the jury might convict.

In the circumstances it is necessary to consider whether in the present case there was evidence on which the jury might reasonably have found that the driver was an accomplice. If there was such evidence the case is not one in which the proviso can be applied.

Now where people go in a car to a spot near the scene of a robbery and the car waits and then drives them home afterwards, the driver of such a car is always subject to suspicion, strong or not according to the circumstances. In the present case the scene of the robbery was about ¼ mile from where the car waited, so the suspicion is not very strong, but the matter does not rest there. Later the same evening the driver made a statement to the police. The report does not give any names although he admitted that he knew the name of the appellant at the time the report was made and he seems to have been familiar with another of the persons in the car. He said that he did mention the name of the appellant but, however inaccurate these reports may be largely owing to difficulties of language, it is not likely that a police officer would fail to ask about names or to take down any names that were mentioned. This is not, of course, conclusive, but it seems to us that there was evidence on which the jury might have considered the witness an accomplice. In the circumstances we allowed the appeal.

Appeal allowed.

Solicitors for the appellant: *Battenberg & Talma.*

Re WONG KUP SING

[A. Cr. J. (Buhagiar J.) June 27, 1955]

[K. L. — Criminal Revision No. 14 of 1955]

Registration and Licensing of Businesses Ordinance, 1953, s. 19(1) — Failure to register business within time prescribed — Whether term of imprisonment mandatory.

The accused was charged under r. 5 of the Registration and Licensing of Businesses Rules, 1953, for failing to register his business within 2 months after commencement of the business. He pleaded guilty and was convicted to a fine of $200. However s. 19(1) of the Registration and Licensing of Businesses Ordinance, 1953, provides that for an offence of this kind the punishment imposed is "imprisonment for a period of one year and to a fine of $1,000 and in the case of a continuing offence a fine of $200 for every day during which such offence continued."

Held: for any of the offences mentioned in sub-s. (1) of s. 19 of the Registration and Licensing of Businesses Ordinance a term of imprisonment must be imposed in addition to a fine.

CRIMINAL REVISION.

E. Brown (Federal Counsel) for the Public Prosecutor.

Accused in person.

Buhagiar J. : — The said Wong Kup Sing was charged in the Magistrates' Court at Kuala Lumpur under Rule 5 of the Registration and Licensing of Businesses Rules, 1953 (L.N. No. 138 of the 26th March, 1953) for failing to lodge Form A for registration of his business within two months after the commencement of the business, an offence punishable under section 19 of the Registration and Licensing of Businesses Ordinance, 1953.

He pleaded guilty; the plea was accepted by the Court; he was convicted and sentenced to a fine of $200.

The said Wong Kup Sing started his business on the 1st January, 1954 and such business should have been registered not later than the end of February, 1954. He did not do so until the 25th day of April, 1955 which was four days after the institution of proceedings against him. The learned Magistrate considered that a fine of $200 or in default eight weeks imprisonment was fair and justifiable sentence in this case in view of the fact that the accused submitted his application for the registration of his business four days after the institution of proceedings and that this was the first offence of the accused.

The learned Magistrate seems, however, not to have given sufficient consideration to the fact that the accused had been carrying on his business without registration for a period of fifteen months and to the very heavy punishment provided by section 19(1) of the said Ordinance for an offence of this kind, that is "imprisonment for a period of one year and to a fine of one thousand dollars and in the case of a continuing offence a fine of two hundred dollars for every day during which such offence continued." I considered that the sentence of $200 was manifestly inadequate and increased the fine to $1,000 or in default six months imprisonment. I allowed the said Wong Kup Sing to pay the fine by monthly instalments of $100 each, first instalment to be paid on the 31st July, 1955.